[redacted]

IN THE

Supreme Court of the United States

October Term, 1967

No. 575

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, ETC., et al.,

Appellants,

vs.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

[redacted]

MOTION TO [redacted] AND BRIEF IN SUPPORT THEREOF

[redacted]

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Appellants,

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Appellees.

Motion to Dismiss

Pursuant to Rule 16(b) of this Court, the Attorney General of the State of New Jersey, on behalf of the State of New Jersey, and the New Jersey State Board of Professional Planners, moves to dismiss this appeal on the grounds that the questions presented are so unsubstantial as not to require further argument.

Opinion Below

The findings in the opinion of the Superior Court of New Jersey were not reported, but have been set forth in Jurisdictional Statement pages 1a to 24a. The opinion of the the Supreme Court of New Jersey and the dissenting opinion of Justice Hall are reported at 48 N. J. 581, 227 A. 2d 313 (1967).

Question Presented

Did the Supreme Court of New Jersey properly find that the legislative exemption from examination for planners licenses of a class of State licensed engineers, land surveyors and architects, reasonably comported with the objectives of the Professional Planners' Licensing Law, where it was shown that the Legislature had developed a broad definition for the practice of planning and that there existed a shortage of persons engaged therein?

Statement of the Case

A. The History of the Act.

An initial attempt by the State of New Jersey to regulate the practice of planning dates from February 17, 1958 when Assembly Bill No. 206 was introduced in the State Legislature. The purpose of the bill, as set forth in Section 1, was to promote the public health, safety and general welfare

> "... by establishing a measurement of qualifications for any person setting himself forth as a professional planner and providing for the registration of such a title ..."

and to

". . . provide the means of assuring that governmental units of the State of New Jersey can be afforded protection as to professional qualifications of persons engaged or employed by them in the preparation of general planning studies . . . ."

Assembly Bill No. 206 died in Committee.

In 1961 new pressure developed for a planners' control measure. Assembly Bill No. 483 was introduced on March 20, 1961. Attached to the Bill was a statement which read as follows:

"The purpose of this revision is to regulate the practice of professional planners by requiring their registration and licensing and providing penalties for the violation of this act in order to assure the municipal governments retaining professional planners of hiring personnel qualified to do the work requested of them.

This bill is endorsed by the New Jersey Society of Professional Engineers and the Municipal Engineers Association of New Jersey."

A month and a half later, on May 1, 1961, Assembly Bill No. 546 was introduced. The purpose of this competing bill, as evinced by its statement, was

". . . to regulate the practice of professional planning by establishing a State Board of Professional Planners, by requiring the registration and licensing of all professional planners by the board and by providing penalties for the violation of this act."

The statement thereafter recited:

"Planning is a distinct, separate profession, which requires specialized training. It is not a branch of

engineering, architecture, or any other profession. Thirty leading colleges and universities award degrees in planning, and more than 400 New Jersey municipalities and 15 counties have planning boards.

Each year brings a significant increase in the amount of planning activity and in the expenditure of public funds on planning in New Jersey. In recognition of the importance of guaranteeing the State's taxpayers that planning will be undertaken only by persons qualified by training and experience, the State Board of Professional Planners would be made up entirely of professional planners qualified under the standards established in this act.

In addition to providing for the licensing of persons specially trained in planning, provisions are made for the licensing as professional planners of persons with degrees in related fields and of persons in allied professions such as architecture and engineering. This bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel.

The fees established in this act have been designed, after consultation with the staff of the Attorney General, to make the operations of the State Board of Professional Planners self-sustaining.

This bill is endorsed by the New Jersey Chapter of the American Institute of Planners."

Each of these bills, A 483, the engineer's version, and A 546, the planners' version, was ultimately recommitted on November 20, 1961 and did not again reach the floor of the Legislature.

Thereafter, on January 16, 1962 the engineers arranged the introduction of Assembly Bill No. 2. While no explanatory statement was annexed, the bill clearly sought to read into existing regulatory enactments concerning professional engineering and land surveying some recognition of planning as a professional concept. Thus, the title of Chapter 342 of the Laws of 1938 was sought to be amended to read as follows:

> "An act concerning the practice of professional engineering [and], land surveying *and professional planning* . . . ."

Once again the planners followed the engineers with their own bill after a lapse of several weeks. On January 29, 1962 Assembly Bill No. 166 was introduced, including verbatim the statement previously annexed to Assembly Bill No. 546 in 1961.

Both Assembly Bill No. 2 and Assembly Bill No. 166 were sent to the Highways, Transportation and Public Utilities Committees. Neither bill was reported out of Committee.

Slowly it became apparent that neither the American Institute of Planners nor the Society of Professional Engineers could succeed in having enacted its version of a bill regulating the practice of planning.

Assembly Bill No. 599 was introduced on March 26, 1962. The legislation was obviously a compromise between the competing factions. It passed both houses of the Legislature, with several Senate amendments, and was enacted into law on August 10 of that year as Chapter 109, Laws of 1962. The statement attached to Assembly Bill No. 599 read as follows:

> "The purpose of this bill is to regulate the practice of professional planning by establishing a State

Board of Professional Planners, by requiring the registration and licensing of all professional planners by the board, and by providing penalties for the violation of this act.

Planning is a profession, which requires specialized training.

Each year brings a significant increase in the amount of planning activity and in the expenditure of public funds on planning in New Jersey. In recognition of the importance of guaranteeing the State's taxpayers that planning will be undertaken only by persons qualified by training and experience, the State Board of Professional Planners would be made up entirely of professional planners qualified under the standards established in this act.

In addition to providing for the licensing of persons specially trained in planning, provisions are made for the licensing as professional planners of persons with degrees in related fields and all licensed professional engineers, land surveyors and registered architects of the State of New Jersey. This bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel.

The fees established in this act have been designed, after consulation with the staff of the Attorney General, to make the operations of the State Board of Professional Planners self-sustaining."

In examining the legislative history of these bills, and particularly the introductions of 1962, the Supreme Court of New Jersey noted in its opinion in the instant matter:

"The statement apparently as amended by the Senate Committee, and attached to the compromise bill, contained some significant departures from the one on the original planners' bill. The paragraph quoted above was dropped and the following was substituted:

> 'Planning is a profession, which requires specialized training.'

Note that planning is no longer described as a 'separate and distinct' profession; further, that the description of planning as not being a 'branch of engineering, architecture or any other profession' is excised. Moreover, the statement contains a reference to the fact that special provisions are included for the licensing of persons with degrees 'in related fields' and for 'all licensed professional engineers, land surveyors and registered architects of the State of New Jersey.' And it says that the bill 'has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel.' "

(Jurisdictional Statement pp. 34a-35a.)

B. Proceedings Below.

The litigation in the instant matter arose by way of declaratory judgment action brought by the New Jersey Chapter of the American Institute of Planners, challenging specifically the constitutionality of Section 3 and the fourth paragraph of Section 11 of Chapter 109 of the Laws of 1962, as set forth in N.J.S.A. 45:14A-1 *et seq.* Named as defendant was the New Jersey State Board of Professional Planners. Thereafter the New Jersey Society of Professional Engineers, the New Jersey Association of Consulting Engi-

neers and the New Jersey Society of Architects were permitted to intervene as defendants. The trial court upheld the constitutionality of Section 3 of the law, declared unconstitutional as violative of the equal protection and due process provisions of the 14th Amendment the fourth paragraph of Section 11, and further declared that paragraph 4, Section 11 was severable from the body of the law and could be excised therefrom.

An examination of the trial court's opinion (Jurisdictional Statement pp. 1a-24a) reveals a serious error which apparently developed through confusion over the several statutes introduced for legislative consideration prior to the passage of Assembly Bill No. 599. Much stress is placed by the trial court upon the "distinct" and "separate" nature of the practice of planning. Such emphasis is confusing in the light of the declaration found in the statement annexed to Assembly Bill No. 599. Its genesis becomes clear only on a careful persual of the opinion, which reveals that the wrong statement was relied on by the court.

The court says:

> "I believe the proof has been clearly established that professional or city planning is a separate and distinct profession and differs from that of professional engineering, architecture and land surveying. The very statement annexed to the bill in question, 'Planning is a distinct, separate profession, which requires specialized training. It is not a branch of engineering, architecture or any other profession.'" (Jurisdictional Statement p. 13a.)

The statement to which the trial court refers is in fact annexed to Assembly Bills No. 546 of 1961 and No. 166 of 1962. Both of these were sponsored by the American Institute of Planners but neither was enacted into law.

Commencing with this erroneous premise the trial court is able to adopt the "separate and distinct" concept and run its thread throughout the analysis.

Thus:

> "The fact that historically planning evolved from architecture and engineering is of little or no consequence. This may be an unfortunate fact, but it is now recognized that the profession of planning is a separate and distinct profession." (Jurisdictional Statement p. 15a.)

And also:

> "Going again to the primary purpose of the law, namely, to see that qualified persons undertake planning, and recognizing [sic] by the law that professional planning is a separate profession, it should necessarily follow that only persons educated and trained in professional planning be licensed." (Jurisdictional Statement p. 16a.)

Again, at page 16a of the Jurisdictional Statement:

> "While the professions admittedly overlap, complement or implement one another, we are here dealing with a legally recognized separate and distinct profession, and to permit unqualified persons, whether they be engineers, architects or land surveyors, to be licensed would in my opinion fall short of the legislative purpose."

Unhappily, a second major error has resulted from the trial court's reading of the wrong statement. In its initial reference to the statement the court notes:

> "I would, however, be remiss if I did not mention the fact that the statement also contains the following:

'Provisions are made for the licensing as professional planners of persons with degrees in related fields *and of persons in allied professions such as architecture and engineering.* The bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel.' " (Emphasis supplied) (Jurisdictional Statement p. 13a.)

The statement actually annexed to Chapter 109 of the Laws of 1962 is different in significant respect, for its adds an important new qualification. It declares:

"In addition to providing for the licensing of persons specially trained in planning, provisions are made for the licensing as professional planners of persons with degrees in related fields *and all licensed professional engineers, land surveyors and registered architects of the State of New Jersey.* This bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel." (Emphasis supplied.)

On the basis of the errors above set forth, and upon consideration of oral testimony relating to factual distinctions between planning, engineering, land surveying and architecture, the trial court concerned itself with two prime considerations:

(a) The legislative import as garnered from an analysis of the statement; and

(b) the competence of engineers, land surveyors and architects to practice planning as a profession. The court concluded that:

> "The evidence does not bear out the fact that an engineer, architect or land surveyor by the education he has received and simply with the training in his respective field possesses the qualifications of a professional planner. Even this is admitted by some of the defendants' own witnesses." (Jurisdictional Statement p. 15a.)

and therefore (as previously noted):

> "While the professions admittedly overlap, complement or implement one another, we are here dealing with a legally recognized separate and distinct profession, and to permit unqualified persons, whether they be engineers, architects or land surveyors, to be licensed would in my opinion fall short of the legislative purpose." (Jurisdictional Statement p. 16a.)

An appeal was taken from the trial court's judgment to the Appellate Division of the Superior Court, whence it was certified to the New Jersey Supreme Court while pending unheard. After entry of judgment in the trial court, Donald R. Goodkind and Lee T. Purcell, licensed professional engineers, were granted leave to intervene as defendants so as to participate in the appeal.

C. The Decision of the New Jersey Supreme Court.

On appeal, the Supreme Court analyzed the statute and its history before turning to aspects of constitutionality. The differences between the Bill Statements noted previously were discussed (Jurisdictional Statement p 13a), and the planners' bill, A 546, was characterized as motivated by ". . . self-interest rather than public interest." (Jurisdictional Statement p. 38a.)

Once the incorrect historical recitation was brought to light, the Supreme Court was in a position to postulate

inferences of purpose derived from the proper historical pattern. By striking down the partisan and mechanistic approach of the Institute of Planners and looking at that aspect of the public interest sought to be reached by the Legislature, the Court found that classification was a response to the need for a measured, step by step approach to regulation of the practice of planning. On this basis the appellate tribunal reversed the judgment of the trial court, one Justice dissenting.

Summary of Argument

The criteria for determining the legitimacy of legislative classification are set forth in *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483, 489 (1955) and *Morey* v. *Doud*, 354 U. S. 457, 464 (1957). These cases note that if any state of facts reasonably can be conceived which will sustain the classification, the existence of those facts at the time of enactment must be presumed. In addition, the Legislature may proceed to meet a recognized evil on a step by step basis.

In the instant matter the New Jersey Legislature broadly defined the profession of planning and sought to enact reasonable standard regulatory or licensing measures. It exempted from the requirement of examination before licensing, a class consisting of engineers, land surveyors and architects already licensed by the State in each of the prescribed disciplines.

The Supreme Court of New Jersey held the classification to be proper. Evidence showed the existence of a shortage of persons engaged in planning. The Court postulated the intent of the Legislature to proceed with regulation step by step, acting in the initial phase to license without examination a class of persons who had already qualified for licenses in the related professional fields of engineering,

land surveying and architecture. In this way the Legislature felt the need for planners could be alleviated.

That the Legislative action did not go as far as it might does not invalidate the statute. *Joseph E. Seagram & Sons, Inc.* v. *Hostetter*, 384 U. S. 35, 50 (1966). Nor is the wisdom of the legislative action a matter for judicial concern. *Sproles* v. *Binford*, 286 U. S. 374, 388-389 (1932).

Appellant argues for a restrictive statute which will show that planning is a "separate and distinct" profession, but this interpretation is based upon an incorrect reading of the legislative statement annexed to the law adopted. Also, appellant seeks to show that engineers, land surveyors and architects are not competent to perform as planners. This argument ignores the statutory limitation to a class of licensed persons, already pretested in their respective disciplines.

ARGUMENT

POINT I

The classification in issue reasonably comports with the purposes of the regulatory act, the Professional Planners' Licensing Law and its challenge does not raise a substantial or important federal constitutional question warranting review by this Court.

A. The Decision of the Supreme Court of New Jersey is Correct.

Basic to a determination of the legitimacy of legislative classification is the meeting of those criteria enunciated by this court in *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483, 489 (1955):

"The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. * * * Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. * * * The legislature may select one phase of one field and apply a remedy there, neglecting the others. * * * The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

Elaborating on these criteria this court said in *Morey* v. *Doud*, 354 U. S. 457, 464 (1957):

"A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. * * * When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. * * * One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

Legislative purpose, gathered from its pronouncements, is the polestar to be followed in determining the reasonableness of express classification. Examination of the history of Chapter 100, Laws of 1962 demonstrates a legislative purpose to establish control over those who would hold themselves out as planners. It does not reveal a desire to monopolistically professionalize the practice. The

Planners were alone in their expressed desire for distinctly and separately recognized professionalization. The contrary partisan viewpoint argued against any need for regulation of this occupational area, asserting that:

> ". . . the governmental units (which are practically the only clients of the planners), unlike the ordinary member of the public, are sufficiently sophisticated to know the individuals and organizations that are competent or experienced in planning and redevelopment. Moreover, . . . selection of planners has been made the subject of executive regulation at various levels of government, state and federal, which makes it extremely unlikely that an unqualified person representing himself as a planner would be employed." (Jurisdictional Statement p. 39a.)

After considerable reflection on these conflicting views the Legislature concluded that the public interest and welfare were involved in the creation of master plans in sufficient degree to warrant regulatory action by the State under its broad grants of police power.

The resulting law, Chapter 109, Laws of 1962, was the considered remedy for the problem, limited to the dimensions the evil assumed in the collective legislative mind. In its wisdom the Legislature sought:

> ". . . to enact reasonable standard regulatory or licensing measures to insure that all persons who offer their services for such planning purposes are *prima facie* qualified to perform them." (Jurisdictional Statement p. 40a.)

In so doing the Legislature declined the definition proposed by the American Institute of Planners which emphasized the "socio-economic" aspects of planning. Instead, the practice of planning was defined

> "... in general terms related for the most part to long standing statutes concerning activities involving fashioning of master plans for the orderly physical development of municipal, county and state units." (Jurisdictional Statement p. 43a.)

It was determined that consonant with the broad objectives of the law and the general definition of the practice of planning, an established class of persons would be exempted from meeting the enumerated qualifications of the law. By Section 11, paragraph 4, "... any duly *licensed* professional engineer, *licensed* land surveyor or *registered* architect of New Jersey ..." could obtain authority to hold himself out as a planner upon application and without more.

It must be emphasized that not all engineers, land surveyors and architects are included.

> "The exemption covers only those who meet the qualifications, pass the examination and obtain the license required by the statute regulating admission to practice his particular profession. ..." (Jurisdictional Statement p. 43a.)

Reading from this foundation and the statement accompanying the law, the New Jersey Supreme Court concluded:

> "It is obvious from the professional planners act now before us that the Legislature considered engineering, architecture, and land surveying as sciences which are closely related to planning, and that those who become licensed in the former ought to be considered *prima facie* competent to pursue the latter." (Jurisdictional Statement pp. 43a-44a.)

The question before this Court, as it has been the question before the trial court and the New Jersey Supreme Court, is whether:

> ". . . the Legislature, in responding to what it conceived to be living facts calling for regulation, did not disregard reason in drawing its lines." (Jurisdictional Statement p. 42a.)

To repeat the language of *Morey* v. *Doud*:

> ". . . if any state of facts reasonably can be conceived that would sustain it [the classification], the existence of that state of facts at the time the law was enacted must be assumed." 354 U. S. 457, 464 (1957).

Speaking to this question the New Jersey Supreme Court found:

> ". . . the evidence is uncontradicted that at present there is a shortage of persons engaging in planning, whatever may be their professional, educational or experiential background. According to the Executive Director of the American Society of Planning Officials, the Society advertised about 1300 professional planning jobs during 1965, and at the end of the year about 400 of them were open and unfilled. That number was higher than at the end of 1964, which in turn was higher than in 1963. It may well be that the Legislature felt the need could be alleviated by admitting to the practice of planning without examination those persons who had already qualified for licenses in the related professional fields of engineering, land surveying and architecture. * * * Nor can it be said on the record before us that it was wholly arbitrary and without reasonable basis for the Legislature to regard licensed members of the three professions as possessing sufficient minimal qualifications for planning to warrant treatment as a distinct class and to grant them exemption from

the licensing requirements of the professional planners act, if they wish to practice in that field.

* * *

All of these circumstances suggest the view that the Legislature felt the current need in the field of community planning was for regulation of those persons who wished to engage in the practice but who had not demonstrated to any public agency that they had sufficient qualifications to do so. The circumstances suggest also satisfaction on the part of the lawmakers that achievement of licensure in one of the three named professions demonstrates possession of sufficient minimal competence to engage in planning to warrant treating such license holders as a separate class and exempting them from the requirements imposed upon those who have no license of any kind to practice planning." (Jurisdictional Statement pp. 48a-50a.)

Undoubtedly referring to the "step by step" approach permissible in regulatory legislation the Court commented:

"And it may be that in the course of time the Legislature will conclude that such a high degree of specialized expertise has come into being in planning that the practice ought to be treated as uniquely separate from and independent of all other professional disciplines. In this event, in its wisdom the Legislature may withdraw thereafter the grant of automatic licensure as professional planners from licensed engineers, land surveyors and registered architects." (Jurisdictional Statement p. 48a.)

The use of language of possibility does not serve to lessen the force of the inferred legislative rationale. In *Watson* v.

Maryland, delineating a constitutional basis for classification, this Court said:

> "We cannot say that these exceptions [to the regulatory provisions of the law] nullify the law. The reason for them may be that hospitals are very often the subject of state or municipal regulation and control, and employment in them may be by boards responsible to public authority under state law or municipal ordinance." 218 U. S. 173, 177 (1910).

And in *Williamson* v. *Lee Optical of Okla.*, in upholding the classification:

> "For all this record shows, the ready-to-wear branch of this business may not loom large in Oklahoma or may present problems of regulation distinct from the other branch." 348 U. S. 483, 489 (1955).

Nor is it of consequence that the results of the Legislature's action may not completely secure the professional standards sought by the Planners.

> "A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it tends to produce." *Joseph E. Seagram & Sons, Inc.* v. *Hostetter*, 384 U. S. 35, 50 (1966).

The Legislature of New Jersey has spoken to a problem of moment. Its response has been that which it deems proper and sufficient. Its reasons, inferable from its actions, are far from arbitrary. The wisdom of its action is not a matter for judicial consideration, for:

> "When the subject lies within the police power of the State, debatable questions as to reasonableness are

not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome." *Sproles* v. *Binford*, 286 U. S. 374, 388-389 (1932).

The legislative solution comports with both the declared and ascertainable purposes of the law, and with the criteria for constitutionality established by this Court.

B. Appellant's Challenge to the Classification is Based Upon a Faulty Reading of the Statute.

Appellant argues that the question here presented is of such substantial import by way of precedent that the inclusion without examination of licensed engineers, licensed land surveyors and registered architects must be rejected. It maintains that ". . . this exemption for a favored class bears no reasonable relation to the purpose of the legislation . . . ." (Jurisdictional Statement p. 23.) Planning, it says, is legislatively declared to be a "separate and distinct" profession on the face of the statute, and cannot be held automatically to include as qualified, licensed engineers, licensed land surveyors and registered architects. As stated in its brief:

> ". . . the test in the instant case is whether there is a reasonable ground for assuming that those architects, engineers and surveyors entitled by statute to planning licenses are qualified to practice planning." (Jurisdictional Statement p. 35.)

Appellant thus interjects its assertion that there exist substantial differences between the qualifications of a planner and the qualifications of a licensed engineer, a licensed land surveyor and a registered architect, and that these differ-

ences preclude any legislative action which serves to dilute the distinction and turn the licensing procedure solely upon qualification in another discipline. Appellant's argument is bottomed in the history and language of the act as read by it, and in the testimony intended to dramatize the alleged distinction, produced by it at the trial court hearing.

Were it accurate in its historical recitation appellant might argue as it has chosen to do. A legislative declaration of the separateness and distinctiveness of the practice of planning, coupled with the further statement that planing is not a subgroup of engineering, architecture and land surveying could be read restrictively. Such a reading would be less apt to give rise to the classification adopted by the Legislature and approved by the New Jersey Supreme Court. While not precluding the classification adopted, incorporation of the engineers, land surveyors and architects without examination would be more difficult to understand.

To make its point, appellant has embraced the error of the trial court in relying upon the wrong statement, and has developed its own legislative history. Appellant's brief is replete with references to findings of both the trial court and the Legislature to the effect that planning is a distinct and separate profession. For example, the Question Presented in the brief refers to a factual determination of the Legislature that the profession of city planning requires "distinct" skills and that the State has chosen to grant "... automatic licenses, without examination, to members of separate and distinct professions. . . ." (Jurisdictional Statement pp. 2-3.) Further, at page 10 appellant declares:

> "... both the Legislature of New Jersey and the trier of the facts below concluded . . . that planning is . . . a completely separate and distinct profession from the other three [engineering, land surveying and architecture]". (Jurisdictional Statement p. 10.)

The analysis on pages 12 and 13 is also the product of this basic error:

> "The legislative recognition of the separateness of planning and engineering is also embedded in the Professional Planners Licensing Act. To begin with, Section 2 of the Act explicitly provides as follows:
>
> > 'The work of the professional planner shall not include or supersede any of the duties of an attorney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey'."

The section cited does not demonstrate a legislative acceptance of the "separateness" of the professions mentioned. It merely points out that the Legislature does not consider a planner qualified to perform the work of an attorney at law, a licensed engineer, land surveyor or a registered architect. The work that a planner may do in these related fields is limited to something less than that which may be performed by State qualified personnel. Continuing its insistence upon adherence to the trial court's erroneous conclusions, appellant states:

> "On the basis of such undisputed evidence the trial court found—*again without contradiction by the Supreme Court of New Jersey*—that 'professional city planning is a separate and distinct profession and differs from that of . . . architects . . .' (App. A, p. 13a)". (Emphasis supplied.) (Jurisdictional Statement pp. 18-19.)

And on page 20:

> "Both the Legislature and the trial court made the usual findings that land surveying is a profession which is separate and distinct from city planning

and which involves entirely different skills (see pp. 13-14 *supra*.)" (Jurisdictional Statement p. 20.)

On page 24:

> "This case is unusual in several respects. First, because the State Legislature itself determined the existence of clear distinctions between the different classes of citizens involved, the invidious discrimination brought about by the statute appears on the face of the legislation itself." (Jurisdictional Statement p. 24.)

On page 32, appellant again refers to the "statutory scheme" and inexplicably comments on the lack of New Jersey Supreme Court consideration:

> "The Supreme Court of New Jersey, however, took a far more casual approach. It paid no attention to the statutory scheme which so clearly recognizes the distinctions between the several professions . . .." (Jurisdictional Statement p. 32.)

The foregoing recitation, clearly demonstrating appellant's reliance on the trial court's error, taints the argument presented. It is difficult to understand appellant's persistence in this error in the face of its explicit repudiation by the New Jersey Supreme Court. (Jurisdictional Statement pp. 34a-36a.)

Obviously if one refers back to the partisan bill introduced by the American Institute of Planners in its "self interest" it is possible to "boot strap" an argument based upon statutory and testimonial distinctions between the professions.

In addition to the foregoing, appellant argues that extended experience in the practice of professional planning is the only real qualification both logically and legislatively recognized as reflecting competence in planning.

> ". . . Section 9 of the Act provides, as a special dispensation, that for a period of eight years from enactment of the Act a person who holds a degree in engineering or architecture (or in one of eight other specified fields) may qualify for a professional planner's license if he has also had specified academic training in planning and 'a minimum of five years' experience in the full-time practice of professional planning' (N.J.S.A. 45:14A-9). Here is clear recognition that neither engineering competence nor architectural competence is planning competence; if an applicant's only skills lie in the field of engineering or architecture, he must acquire planning skills as well before he is qualified even to take the planning examination for a professional planner's license. And yet under Section 11 of the same statute a person who has only engineering skills (or architectural skills or land surveying skills) is not only automatically qualified for a license but can get one without taking any examination in the planning discipline." (Jurisdictional Statement pp. 27,28.)

For a brief instant the argument sounds plausible, until we realize it ignores that part of the legislative scheme which recognizes licensure in the related discipline as adequate qualification for a planning license. Section 11, paragraph 4 admits without examination only *licensed* engineers, *licensed* land surveyors and *registered* architects. The Legislature has decided that only the State, acting by examination, may determine whether an applicant for license meets prescribed qualification standards.[1] In its

[1] The one exception to this may be found in Section 11, paragraph 3 of Chapter 109, Laws of 1962. This provides that an applicant holding a planner's license from any State may be admitted in New Jersey without examination when the applicant's qualifications meet the requirements of the act.

wisdom, the Legislature also has indicated its acceptance of licensed engineers, licensed land surveyors and registered architects as competent to hold themselves out as planners on the basis of qualifying examinations taken for licensure in each of these disciplines. No conflict exists between the statute and legislatively recognized competence. The measuring criteria is that of State approved qualification by examination. Those who have not proved to the satisfaction of the State that they are properly qualified must be examined.

The daylight of verified statutory development reveals the *reductio ad absurdum* offered by appellant at pp. 29 and 30 of the Jurisdictional Statement as a manifest obliquity.

Throughout its brief appellant has failed to recognize a simple truth. What is in issue is not the relative competency of planners, engineers, land surveyors and architects, but the right of any of the members of these disciplines to be statutorily designated as planners. The concern of the courts must be focused on the right and power of the New Jersey Legislature to determine for itself the scope of the State's regulation of the practice of planning, and to act within that declared scope to meet and overcome in a practical manner the problems which engendered the legislation here challenged.

CONCLUSION

The New Jersey Supreme Court has determined that the existence of a class of State qualified licensees in other disciplines together with the shortage of persons specifically trained as planners warranted a legislative classification permitting those whose qualifications have been pretested by the State to meet the need for trained personnel. In so holding the Court has properly declined comment on the wisdom of the legislative act. Appellant has raised no substantial or important federal constitutional question which warrants the further attention of this Court and, therefore, it is respectfully urged that the instant appeal be dismissed.

Respectfully submitted,

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